No. 72-1739

AUG 31 1973

In the Supreme Court of the United States

OCTOBER TERM, 1973

GERALD A. SCHROEDER and CLARA JOHNSON SCHROEDER,

Petitioners,

vs.

TRUSTEES OF SCHOOLS OF TOWNSHIP 42 NORTH, RANGE 11, EAST OF THE THIRD PRINCIPAL MERIDIAN, COOK COUNTY, ILLINOIS, and BOARD OF EDUCATION, SCHOOL DISTRICT NO. 57, COOK COUNTY, ILLINOIS,

Respondents.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE APPELLATE COURT OF ILLINOIS, FIRST DISTRICT, SECOND DIVISION

ALBERT J. HORRELL
111 West Washington Street
Chicago, Illinois

DONALD R. HARRIS
One IBM Plaza
Chicago, Illinois 60611
Attorneys for Respondents

JENNER & BLOCK
One IBM Plaza
Chicago, Illinois 60611

UNITED STATES LAW PRINTING CO., CHICAGO, ILLINOIS 60610 (312) 525-0161

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To: *The Honorable Chief Justice and Associate Justices of the Supreme Court of the United States.*

Respondents submit this brief in opposition to the petition for certiorari.

OPINION BELOW

The opinion below of the Illinois Appellate Court is reported at 8 Ill.App. 3rd 122, and at 289 N.E.2d 247.

QUESTIONS PRESENTED FOR REVIEW

Were the Schroeders denied rights protected by the United States Constitution as a result of:

1. The granting by the trial court of an injunction restraining the Schroeders from filing further state court suits raising questions several times decided against them by Illinois appellate courts, or by

2. The reference in 1965 of this case to a Master in Chancery for hearings in accordance with procedures approved by the Supreme Court of the State of Illinois under the Constitution of the State of Illinois.

STATEMENT OF THE CASE.

This case is part of almost innumerable attempts petitioners have made since 1961 to relitigate various aspects of the school district's taking under the power of eminent domain of a certain parcel of land in Mount Prospect, Illinois, for use as a school site. The history of this litigation is reported in *Trustees of Schools* v. *Schroeder*, 23 Ill.2d 74 (1961); *Trustees of Schools* v. *Schroeder*, 25 Ill. 2d 289 (1962); *People ex rel. White* v. *Busenhart*, 29 Ill. 2d 156 (1963) (deciding consolidated appeals in two cases); *Schroeder* v. *Illinois*, 354 F.2d 561 (7th Cir. 1965), *cert. denied*, 384 U.S. 972 (1966); *Schroeder* v. *Busenhart*, 80 Ill.App.2d 431 (1st Dist. 1967), *cert. denied*, 390 U.S. 947 (1968); *Schroeder* v. *Busenhart*, 272 N.E.2d 750 (Ill. 1st Dist. 1971), *cert. denied*, 405 U.S. 1017 (1972); and in the opinion below, *Trustees of Schools* v. *Schroeder*, 8 Ill.App.3rd 122, 289 N.E.2d 247 (1st Dist. 1972). The following is a summary of that history.

The Condemnation Action And The First Appeal

In November, 1959, the Respondent Trustees of Schools filed an action seeking to condemn certain real estate then owned by the Schroeders in Cook County, Illinois. The Schroeders filed a traverse to the petition to condemn, which was denied. After a trial on the question of just compensation, a jury returned a verdict for $267,083.33. On October 27, 1960, a judgment order was entered by the Circuit Court of Cook County on that verdict, awarding the sum returned as just compensation, together with interest from the date of the verdict until the date of the judgment, for the taking of the real estate.

The Trustees of Schools filed a post-trial motion asking for a new trial, which was granted. The Schroeders appealed to the Illinois Supreme Court from the order granting a new trial, and the order was reversed "with directions to vacate the order granting a new trial and to enter judgment upon the verdict for $267,083.33." This opinion of the Illinois Supreme Court, dated September 22, 1961, appears at 23 Ill. 2d 74.

On October 18, 1961, the Circuit Court, pursuant to the Illinois Supreme Court's mandate, entered a judgment order vacating the order granting a new trial, and providing that upon payment of $267,083.33, plus interest, the Trustees of Schools would be vested with fee simple title to the real estate. On October 23, 1961, the Circuit Court entered an order finding that the amount ($280,956.10) required by the judgment order has been paid, and further found that fee simple title to the property was vested in the Trustees of Schools. (See 29 Ill. 2d at 158.)

The Second Appeal

On November 6, 1961, the Schroeders filed a notice of appeal to the Illinois Supreme Court from an order entered in 1960 denying their traverse, from an order denying a motion to vacate the order denying the traverse, from the judgment order of October 18, 1961 entering judgment on the jury's verdict in the sum of $267,083.33, and from an order of October 23, 1961 granting possession of the real estate to the Trustees of Schools. On May 25, 1962 (rehearing denied on September 27, 1962), the Illinois Supreme Court affirmed the above recited orders of the Circuit Court in an opinion published at 25 Ill.2d at 289.

By reason of the judgment order entered on October 18, 1961, the order for possession entered on October 23, 1961, and the affirmance of these orders by the Illinois Supreme Court, the rights of the parties with respect to the title to the property acquired by the Trustees of Schools under the power of eminent domain, and the right to possession of the property, became and have ever since been fully adjudicated, and any right which the Schroeders had to said property prior to these orders terminated. (*People ex rel. White* v. *Busenhart*, 29 Ill.2d 156, 165 (1963).)

The 1962 Petitions And Motions And The Third Appeal

Over the Labor Day week-end in 1962, the Schroeders, in violation of the order for possession entered on October 23, 1961, retook possession of the real estate. On September 4, 1962, the Trustees of Schools filed a petition for a Supplemental Writ for Possession to remove the Schroeders from the real estate. (See 29 Ill.2d at 158.) While the Supplemental Writ for Possession was pending in the Circuit Court, the Schroeders filed a petition in the Illinois Supreme Court seeking to amend the Petition for Rehearing previously filed in the case culminating at 25 Ill. 2d 289. This Petition was denied on September 12,

1962, and on September 27, 1962 the Illinois Supreme Court denied rehearing in the Second Appeal.

The Schroeders also filed in the condemnation case in the Circuit Court a "Cross-Petition And Counterclaim" to the Petition for Supplemental Writ for Possession in which the Schroeders charged that the Trustees of Schools had abandoned their Petition to Condemn. On September 25, 1962, the Schroeders filed another petition in the condemnation case in the Circuit Court, charging that the Court had no authority to evict them from the premises and no authority to vest the Trustees of Schools with fee simple title. (See 29 Ill.2d at 158-59.)

Meanwhile, on September 13, 1962, the Schroeders, together with several other persons alleged to be taxpayers in the school district, filed a petition for leave to file a taxpayers' complaint for injunction, with a proposed complaint attached. The proposed complaint sought to enjoin the School Board from paying out public funds for the construction of the school, alleging, *inter alia*, that the Trustees of Schools did not own the real estate because of various alleged defects in the condemnation proceeding. The Circuit Court denied leave to file the taxpayers' injunction complaint on the ground that it was insufficient in law, and because it amounted to a collateral attack on the decree entered, appealed and affirmed in the condemnation case. (See 29 Ill.2d at 160-62.)

The Circuit Court also denied the various motions and petitions filed by the Schroeders in the condemnation case in 1962 after the Schroeders' unlawful re-entry on to the real estate.

The Schroeders appealed from the denial of leave to file a taxpayers' complaint, and from the denial of their various motions and petitions filed in the condemnation

case. These appeals were consolidated by the Illinois Supreme Court.

In an opinion filed on September 27, 1963 (rehearing denied November 25, 1963), published at 29 Ill. 2d 156, the Illinois Supreme Court affirmed the orders of the Circuit Court, both in the taxpayers' injunction suit and in the condemnation case. The Court stated (p. 159) that all the points raised by the Schroeders in the condemnation case in their petitions and motions filed after the 1962 Labor Day week-end were either conclusively adjudicated against the Schroeders or could have been raised in the second appeal and were, therefore, barred. (29 Ill. 2d at 158.) The Court stated with reference to the taxpayers' injunction suit, that the petitioners therein sought to raise "the points urged in the eminent domain case." (*Id.* at 162.) The Court further stated (*ibid.*):

> "They go so far as to allege unequivocally that title was vested in the Schroeders despite the records of the court showing the judgment which we affirmed in the second Appeal. (25 Ill. 2d 289.) That judgment is not subject to collateral attack since the Court had jurisdiction of the subject matter and the parties. . . . Consequently, these points were improperly pleaded inasmuch as they constitute a collateral attack upon the judgment of the court vesting title in the School Trustees."

The "Conspiracy Case" And The Fourth Appeal

In late 1963, the Schroeders filed another suit in the Circuit Court of Cook County against the Trustees of Schools, the Board of Education, and various firms and individuals who had been hired in connection with the construction of a school on the condemned property. The Schroeders' Complaint charged that all of the defendants had conspired to put plaintiffs out of the fruit and vegetable business they had conducted on the property taken

in the condemnation proceeding. The Schroeders further alleged in that complaint that they, and not the Trustees of Schools, were the rightful owners of the real estate upon which the school was being constructed. Summary judgment was granted for the defendants in that case, and that judgment was affirmed by the Illinois Appellate Court in an opinion reported at 80 Ill. App. 2d 431 (1967). Leave to appeal was denied by the Illinois Supreme Court, and certiorari was denied by this Court. 36 Ill. 2d 632 (1967), *cert. denied* 390 U.S. 947 (1968).

The First Federal Case And The Fifth Appeal

Next, on January 20, 1964, while the "conspiracy" case was still pending in the Circuit Court, the Schroeders filed an action in the United States District Court for the Northern District of Illinois claiming that the condemnation proceeding had violated their civil rights and deprived them of their property without due process of law in violation of the Fourteenth Amendment to the Constitution of the United States. Among the defendants named in that case were the Trustees of Schools, the Board of Education and the State of Illinois. In this federal action, the Schroeders sought to cause all the proceedings, judgments and orders of the Courts of the State of Illinois relating to the real estate declared null and void. The Federal District Court on October 29, 1964 dismissed that complaint, and that order was affirmed by the Court of Appeals for the 7th Circuit in *Schroeder v. State of Illinois, et al.*, 354 F.2d 561 (1965), *cert. denied*, 384 U.S. 972 (1966).

The Second Federal Case And The Sixth Appeal

In 1967, the Schroeders filed another action in the Federal Court, again raising the allegation that they, and not the Trustees of Schools, were the rightful owners of the fee to the property condemned in 1959. That com-

plaint was likewise dismissed by the District Court, and the Schroeders' appeal from that order was dismissed by the Court of Appeals on August 28, 1968 because of the Schroeders' failure to file a brief. (*Schroeder v. Murphy, et al.*, Nos. 16730 and 16731.)

The Instant Case And The Seventh Appeal

After the instant complaint was filed by the Trustees of Schools and the Board of Education in November, 1964, the trial court entered an order referring the cause to a Master in Chancery. After hearing evidence, the Master recommended that a decree for injunction be granted, and on July 30, 1968 the trial court entered a decree for injunction restraining the Schroeders from filing further actions in Illinois state courts to affect the Trustees of Schools' title to the real estate.

The Complaint filed by the Trustees of Schools also requested money damages, and hearings on the question of damages began before the Master in January, 1969. While they were in process, the Schroeders filed a motion to vacate the Decree of Injunction and requested leave to file a "Counterclaim at Law", a copy of which was attached to the motion. The "Counterclaim at Law" stated that the petition of condemnation filed by the Trustees of Schools in 1959 was "*void ab initio*," and requested an order voiding the October 27, 1960 order because the Circuit Court did not have jurisdiction to award a fee simple title to the Trustees of Schools. The Schroeders were denied leave to file their proposed Counterclaim.

In August, 1969, the Master recommended the award of damages to the Trustees of Schools, and the trial court entered judgment for $24,544.21. The Schroeders appealed, and the Illinois Appellate Court affirmed the decree for injunction and the order denying leave to file a Counterclaim, but reversed the judgment for damages.

ARGUMENT

I.

THE TRIAL COURT'S GRANT OF AN INJUNCTION WAS PROPER, AS WAS ITS REFUSAL TO VACATE ITS INJUNCTION TO PERMIT THE SCHROEDERS TO FILE THEIR "COUNTERCLAIM AT LAW."

The injunction entered by the trial court enjoined the Schroeders "from instituting or prosecuting any proceedings . . . for the purpose of causing the vacation or in any manner affecting the verdict and judgment . . . entered in [the 1959 condemnation case], or any proceedings ancillary or supplemental thereto affecting title in the premises described in said condemnation action in plaintiff, . . ." As both the Illinois Supreme Court and the Illinois Appellate Court have had occasion to note, the rights of the parties with respect to the title and right of possession to the condemned property has been fully adjudicated since May 25, 1962. See *People ex rel. White* v. *Busenhart*, 29 Ill.2d 156, 159-60 (1963); *Schroeder* v. *Busenhardt*, 80 Ill.App.2d 431, 438-39 (1st Dist. 1967). Nevertheless, in this very case the Schroeders wanted the trial court to lift its injunction against further attacks on the school authorities' title so that they could file a "Counterclaim at Law" which alleged that they were the owners of fee simple absolute title in the property, and that the judgments of the Illinois courts to the contrary were "void *ab initio.*"

The most cursory review of the tortured history of this litigation demonstrates that nothing less than an injunction like that issued will deter the Schroeders from their seemingly endless course of vexatious litigation.

In effect, the Schroeders' argument is that even though they have prosecuted four or five separate suits in an attempt to avoid the judgment entered in the 1959 condemnation action, they should not be enjoined from filing further suits. The courts, however, have some interest in forestalling the monumental waste of judicial time which would be required to hear further assaults by the Schroeders upon the judgment in the 1959 condemnation case. See *Patterson* v. *Northern Trust Co.*, 286 Ill. 564, 567 (1919). It is settled in Illinois and elsewhere that a court of equity has jurisdiction to enjoin the maintenance of vexatious or harassing litigation, and that the plea of *res judicata* is not an adequate remedy for a party who is subject to such litigation. In *People ex rel. Lake County Bar Assoc.* v. *Circuit Court of Lake County*, 31 Ill.2d 170 (1964), the Illinois Supreme Court had before it a petition for leave to file an original action for a Writ of Prohibition to enjoin successive law suits challenging the right of Lake County to issue and sell bonds for the construction of a courthouse, a right which the Illinois Supreme Court had upheld in a prior appeal. Although the Supreme Court held that a Writ of Prohibition should not issue from that Court, it pointed out that an injunction by the trial court was an appropriate remedy (31 Ill.2d at 173-74):

> "While we have thus concluded that the writ of prohibition should not issue, it does not follow that petitioners are without adequate remedy. The jurisdiction of a court of equity to restrain the maintenance of vexatious or harassing litigation is well established, [citations omitted] and we have concluded that that is the appropriate remedy in the present case. In view of the serious financial injury and inconvenience to the public that could result from successive lawsuits, apparently designed to prevent the issuance and sale of the proposed revenue bonds, we

> have considered the advisability of issuing the injunction of this court to restrain the prosecution of the pending case and the institution of further litigation. We have concluded, however, that the matter may more appropriately be dealt with in the circuit court, either by a counterclaim for injunction in the pending case or by an independent action for injunction."

Thereafter a counterclaim for injunction was interposed in the pending action. The trial court granted the injunction requested in the counterclaim, and enjoined plaintiffs "from the institution of vexatious or harassing litigation of any issue raised and decided, or governed in principle by the" plaintiffs' first appeal. The Illinois Supreme Court affirmed in *Bowman* v. *Lake County Public Building Comm'n*, 31 Ill.2d 575, 578-79 (1964). *Accord, Clinton* v. *United States*, 297 F.2d 899, 901 (9th Cir. 1961), *cert. denied*, 369 U.S. 856 (1962); *Meredith* v. *John Deere Plow Co.*, 261 F.2d 121, 124 (8th Cir.) *cert. denied*, 359 U.S. 909 (1958).

The assumption underlying all of the Schroeders' litigation is the assertion that the Circuit Court of Cook County had no jurisdiction to award a fee simple title to the school authorities in the condemnation action filed in 1959. The Schroeders remain undaunted by the fact that this point has long since been resolved by their failure to raise it in the "second appeal" (see *People ex rel. White* v. *Busenhart*, 29 Ill.2d 156, 159-60 (1963), or by the fact that Illinois law is clear to the effect that a school district may acquire a fee title (see *City of Waukegan* v. *Stanczak*, 6 Ill.2d 594, 605 (1955).) In fact, the Illinois Appellate Court has specifically held, in another one of the Schroeders' various litigations, that the Circuit Court of Cook County had authority to grant fee simple title in the prop-

erty in question to the school authorities. In *Trustees of Schools* v. *Schroeder*, 2 Ill.App.3d, 1009, 1015; 278 N.E.2d 431, 435 (1st Dist. 1971), the court stated:

> "We believe that the position of our Supreme Court is clear and that the Trustees of Schools were fully empowered by par. 7-17 to take a fee simple absolute estate in the Schroeders' property."*

The fact that the Schroeders continue to urge that the Circuit Court of Cook County had no jurisdiction to award fee simple title, notwithstanding numerous appellate pronouncements to the contrary, speaks eloquently of the necessity for an injunction.

II.

NO FEDERAL QUESTION IS PRESENTED BY THE STATE COURT INJUNCTION AGAINST FURTHER STATE COURT SUITS.

The injunction complained of in the instant matter is an injunction prohibiting the Schroeders from filing further challenges to the school authorities' title in Illinois state courts. The injunction specifically excludes from its scope federal court litigation:

> "[T]he within injunction against [The Schroeders] shall not affect any litigation in courts of the United States of America."

---

* This case was between the Schroeders and the attorneys who represented them in the 1959 condemnation case. The Schroeders claimed that their attorneys were guilty of malpractice in having failed to argue in the second appeal that the Circuit Court lacked jurisdiction to award a fee title to the school authorities. In order to sustain the summary dismissal of this claim, it was necessary for the court to conclude that, as a matter of law, the Schroeders' position was without merit.

The closing of the doors of the Illinois courts to the Schroeders on the limited question of the title to this parcel of real estate after almost fifteen years of litigation does not present any Federal Constitutional issue. See *Herb* v. *Pitcairn*, 324 U.S. 117, 125 (1945); *Fox Film Corp.* v. *Muller*, 296 U.S. 207, 210 (1935).

III.

NO FEDERALLY PROTECTED CONSTITUTIONAL RIGHT WAS VIOLATED BY THE REFERENCE OF THIS CASE TO A MASTER IN CHANCERY.

As the court below noted (8 Ill. App. 3rd at 124, 289 N.E.2d at 249), the reference of this case to a master in chancery was proper under the Illinois Constitution because the master was in office when the suit was filed and when the trial court by appropriate order made the reference. The Illinois Supreme Court in 1967 determined the propriety of references to masters under those circumstances. *House of Vision, Inc.* v. *Hiyane*, 37 Ill.2d 32, 36, 225 N.E.2d 21, 24 (1967).

Although the Schroeders argued below that the reference of this case to a master violated rights secured by the Illinois Constitution, they never suggested that any federally protected right was violated. The Schroeders filed three briefs in the Illinois Appellate Court (an appellant's brief, a reply brief, and, after they changed counsel, a "supplemental" brief). They also filed in the Illinois Supreme Court a petition for leave to appeal from the decision of the Illinois Appellate Court. None of these four briefs raised any federal constitutional question. They clearly are not entitled to raise such a new ground in a petition for certiorari to this Court. *Michel* v. *Louisiana*, 350 U.S. 91, 99 (1955); *Bailey* v. *Anderson*, 326 U.S. 203, 206-07 (1945).

In any event, it is clear that no federal constitutional question is presented by the Illinois procedural rules followed in the instant case. See *Bailey* v. *Anderson*, 326 U.S. 203, 205 (1945). Even the Schroeder's Petition for Certiorari to this Court does not suggest how any federally protected right has been violated.

CONCLUSION

The Petition for Certiorari should be denied.

Respectfully submitted,

ALBERT J. HORRELL
111 West Washington Street
Chicago, Illinois

DONALD R. HARRIS
One IBM Plaza
Chicago, Illinois
Attorneys for Respondents

JENNER & BLOCK
One IBM Plaza
Chicago, Illinois 60611